

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

CHARLES V. STUART *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Depositions filed in the case, and numbered 1, 2, and 3, transmitted to the House of Representatives.
3. Claimant's manuscript brief, transmitted to the House of Representatives.
4. United States solicitor's brief.
5. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of February, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the judges of the Court of Claims of the United States of America, established by the act of Congress approved 24th of February, in the year 1855.

The petition of Charles V. Stuart, a citizen of the State of California, and residing at San Francisco, in the said State, respectfully represents to this honorable Court:

That on the 8th day of January, 1855, your petitioner became the

assignee of a claim against the government of the United States for the sum of \$7,826 06, by reason of having purchased the same in the spring of the year 1853, for a full and valuable consideration, and that your petitioner is the sole and only owner of such claim.

That the claim in question arose as follows: Adam Johnston, sub-Indian agent of the United States, appointed for the State of California, on the 13th April, 1849, made a verbal contract with George G. Belt & Co., merchants and licensed traders in the Indian country, for the supply of beef and other provisions to the Indians of the San Joaquin valley and Tuolumne and Merced rivers; such contract was made in view of the absolute necessity of the case, and in the confident belief that the department had the power to order its payment.

Owing to the exigencies of the service, caused by the large number of Indians being at the aforesaid places, and in a starving condition, the Indian agent considered it his duty to supply them with food in preference to making them gaudy or showy presents, although the latter would have been more pleasing to the eye for them; yet, without food or the means of subsistence, they would, as a matter of necessity, have obtained food by theft, and which would inevitably have resulted in scenes of bloodshed and murder, and have seriously interfered with the prospect of effecting any treaties with them, or of carrying out the humane views and intentions of the United States government towards them; and here your petitioner would respectfully suggest that Mr. Johnston acted with great prudence in the matter by distributing the provisions thus obtained from the merchants before mentioned in rations suitable for immediate use, rather than deliver the Indians cattle, which might, and in so many instances did, stray away, thus depriving the Indian of the benefits resulting from the generosity of the United States government.

Your petitioner further shows that the distribution of provisions by the agent to the Indians commenced early in 1851, and continued up to January, 1852, inclusive, and of which the office of Indian affairs had full and immediate notice, as more fully appears by the letter of the agent, dated 24th June, 1851, and printed in part 3 Annual Message and Accompanying Documents, 1851 and 1852, pages 513, 514, to which your petitioner begs respectfully to refer, and in which the sub-agent asks for advice as to the course pursued by him. The reply to which was a communication from the department, under date of 12th August, 1851, to Adam Johnston, the sub-agent, approving his course, and will be found in exhibit marked A, being an extract from said communication; a perusal of which will satisfy your honorable Court that the sub-Indian agent in this matter exercised a sound discretion, and that he had no reason to doubt but that Congress would make an appropriation to discharge all the liabilities incurred by him with said traders; as without the food thus distributed the Indians must have literally starved, and the object of the United States in extinguishing the Indian right of occupancy to the lands in the neighborhood before mentioned wholly frustrated. Add to which, the sub-Indian agent considered that his duty to his government under his appointment was to protect and feed the Indians over whom the United States claimed the right to have jurisdiction.

Your petitioner further avers that the said Messrs. Geo. G. Belt & Co. furnished the provisions to the sub-agent, Adam Johnston, in good faith, believing that he had full power and authority to make the contract, and that the provisions thus supplied to the United States would be promptly paid for whenever the accounts for the same were duly presented to the proper authorities for that purpose.

That the said George G. Belt & Co. furnished the said Adam Johnston, for distribution among the Indians, provisions, consisting of beef, flour, beans, &c., to the amount of \$9,450 31, on account of which was paid \$1,624 25, leaving a balance due by the United States of \$7,826 06, the particulars of which are annexed, and marked Exhibits from 1 to 5, inclusive, being the receipts of Adam Johnston, esq., the sub-Indian agent, for the said supplies.

Your petitioner further states that the prices of the various articles furnished as aforesaid by Belt & Co. were all under the market price at which articles of similar quality were selling to the whites in the very neighborhood where these provisions were distributed; that their distribution was the means of preventing the Indians from robbing and murdering the whites; that the said Belt & Co. had the utmost confidence in the officers sent by the government to treat with the Indians, and never doubted for a moment their right to contract debts for supplies—a confidence in which your petitioner most fully participated.

Your petitioner, therefore, prays that the solicitor of the United States, appointed to represent the government before this honorable Court, may be required to answer to this petition, and that such proceedings may be had thereon as justice and equity require; and that on the final hearing this Court will grant to your petitioner such relief as his case merits.

CHARLES V. STUART.

City and county of San Francisco, ss:

Charles V. Stuart, of the city of San Francisco, being duly sworn, deposes and says, that he has read the foregoing petition, and that the matters therein stated are true to the best of his knowledge and belief, and that he is the said assignee of said claim for a full and valuable consideration.

Subscribed and sworn to before me this day, 10th November, 1855.

CHARLES V. STUART.

WM. C. PARKER, *Notary Public.*

[Exhibit No. 1.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of Messrs. Belt & Co. two thousand nine hundred and ten pounds of beef, at twelve and a half cents per pound; six hundred pounds of flour, at fourteen cents per pound; sixty pounds of beans, at twenty cents per pound, and seventy-one pounds of bread, at

twenty cents per pound; delivered to a party of Stanislaus Indians, and a party of the Four Creeks Indians, whilst on a visit to this reservation, as per verbal orders, from August 5 till September 29, inclusive. The amount being four hundred and sixty-two dollars and eighty-one cents, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 2.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. twelve thousand and one hundred pounds of beef, at fourteen cents per pound, and three thousand four hundred and fifty pounds of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from September 29 to October 24, inclusive. The amount being twenty-two hundred and forty-six dollars, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 3.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. fourteen thousand seven hundred and nine pounds of beef, at fourteen cents per pound, and three thousand four hundred and fifty of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from November 2 to November 30, inclusive. The amount being two thousand six hundred and eleven dollars and twenty-six cents, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 4.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. fifteen thousand three hundred and seven pounds of beef, at fourteen cents per pound, and four thou-

sand two hundred and fifty pounds of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from December 1 to December 31, inclusive. The amount being twenty-eight hundred and twenty-two dollars and ninety-eight cents, which is to be paid out of the first appropriation by the government for such purposes, *less* sixteen hundred and twenty-four dollars and twenty-five cents, being the amount of two bills of government property sold to Messrs. Belt & Co., and credited upon the account appended to this voucher or receipt, which is hereby reduced to the sum of eleven hundred and ninety-eight dollars and seventy-three cents, to be paid out of said appropriation.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 5.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. seven thousand five hundred and nine pounds of beef, at fourteen cents per pound, and sixteen hundred pounds of flour, at sixteen cents per pound; delivered to the Indians upon the Mercedes and Tuolumne reservations, as per contract, from the 1st to 31st January, inclusive, in the year 1852. The amount being thirteen hundred and seven dollars and twenty-six cents, which is to be paid out of the first appropriation made by the government of the United States for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

Extract of a letter from Charles E. Mix, Acting Commissioner ad interim, addressed to Adam Johnston, Indian sub-agent for Indians, California.

[Exhibit A.]

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, August 12, 1855.

"SIR: Your letter of 25th June, 1851, giving an account of your proceedings as sub-agent for the Indians in San Joaquin valley, for three months preceding that date, has been received.

"The motives which prompted you to furnish additional subsistence to the Indians, and to employ a physician to vaccinate them and prescribe for the diseased among them, are duly appreciated by this office; and as there are no appropriations now applicable for such expenditures the department will recommend the subject to the favorable consideration of Congress, that such action may be had by that body as shall provide for them."

IN THE COURT OF CLAIMS.—NO. 459.

CHARLES V. STUART *vs.* THE UNITED STATES.*Brief of the United States Solicitor.*

Besides the testimony taken in this case, and yet unprinted, the following public documents of Congress will be referred to, viz:

Document 1, Senate, second session thirty-first Congress, annual report of the Secretary of the Interior.

Document 61, Senate, first session thirty-second Congress, debts contracted by Indian agents, &c.

Document 4, Senate, special session, 1853, correspondence with Indian agents.

Which will be hereafter briefly designated as documents 1, 61, 4.

On or before the 14th of October, 1849, Adam Johnston was appointed sub-Indian agent on the Sacramento and San Joaquin rivers, in California, to include the Indians at or in the vicinity of those places, and any others to be subsequently designated by the Indian department.—(Com. Ind. Aff. to Johnston, Oct. 14, 1849, Doc. 4, p. 2.) This sub-agency was subsequently restricted to the Indians “in the valley of San Joaquin.”—(Com. Ind. Aff. to Johnston, Nov. 24, 1849, Doc. 4, p. 5; also pp. 4, 6.)

It seems this appointment was made under the 5th section of the act organizing the department of Indian Affairs, approved June 30, 1834.—(4 Stat., 735.)

By act of September 28, 1850, (9 Stat., 519,) the President was authorized to appoint three Indian agents for California, and by an act approved September 30, 1850, (9 Stat., 558,) an appropriation of \$25,000 was made, “to enable the President to hold treaties with the various Indian tribes in the State of California.”

George W. Barbour, Redick McKee, and O. M. Wozencraft, were appointed agents under the act of September 28, 1850, but it being soon discovered that no appropriation had been made for their salaries, their functions and salaries as Indian agents for California were suspended; and they were appointed, under act of September 30, commissioners to treat with the Indians.—(Doc. 1, p. 29.) The instructions to them, dated October 15, 1850, as commissioners, are printed in Doc. 4, p. 8. The appropriation of \$25,000 was then remitted them.

By an act approved February 27, 1851, section 3, (9 Stat., 586,) it was enacted, that “hereafter all treaties with Indian tribes shall be negotiated by such officers and agents of the Indian department as the President of the United States may designate for that purpose.” The provisions of this act were communicated to the commissioners by the Commissioner of Indian Affairs, in a letter dated April 12, 1851, (Doc. 4, p. 14,) whereby they were informed that their offices and functions as commissioners were abrogated and annulled; they were, however, directed not to suspend negotiations, but to enter upon their appointments as agents, and were, *as such*, designated

(under the act of 1851) to negotiate with the Indians of California, under the instructions already given.

This letter was received by the commissioners in San Francisco, early in June, 1851.—(Doc. 4, p. 130.)

By act of March 3, 1851, (9 Stat., 572,) a further appropriation of \$25,000 was made for expenses of treating with Indians in California, which was remitted to them by the Commissioner of Indian Affairs, June 25, 1851.—(Doc. 4, p. 17.)

On the 27th of June, 1851, (Doc. 4, p. 17,) the Commissioner of Indian Affairs wrote to the commissioners, that the two appropriations of \$25,000 each constituted all the money applicable to the negotiation of treaties in California; and he said, "when the funds referred to have been exhausted, you will close negotiations and proceed with the discharge of your duties as agents simply, as the department could not feel itself justified in authorizing anticipated expenditures beyond the amount of the appropriation made by Congress." This letter reached McKee September 14, near Humboldt river, (p. 186,) Barbour at San Francisco, in September, (p. 260,) and Wozencraft on the Sacramento river, September 2.—(p. 180.)

The commissioners arrived at San Francisco between the 27th of December, 1850, and January 8, 1851, (Doc. 4, p. 53,) and soon after started southward up the valley of the San Joaquin, meeting and treating with the Indian tribes of the valley.—(Doc. 4, pp. 54 to 76.) Arrived near the head of the valley, at Camp Barbour, May 1, (Doc. 4, p. 76,) they concluded to separate and act individually in their several districts, which had been determined by lot. Barbour took the southern district, Wozencraft the middle district, and McKee the northern district.

This division was communicated to the Commissioner of Indian Affairs, by letters of May 1 and 13, 1851, (Doc. 4, p. 77,) and approved by him June 27, 1851.—(Doc. 4, p. 17.)

Charles V. Stuart claims, as assignee of George Belt & Co., for several bills of provisions (beef, flour, beans, &c.) furnished the Indians of the reservation on the Mercedes and Tuolumne rivers, for which he was trader, to the amount of \$7,826 06, by order of A. Johnston, from August 5, 1851, to January 31, 1852.

At this period Wozencraft was in charge of this agency; Johnston was only a sub-agent. The latter, indeed, appears to have considered himself as in charge of the reservations in the valley of the San Joaquin.—(See Doc. 4, p. 241.)

Johnson had received from the commissioners, August 28, 1851, (Doc. 4, p. 268,) 1,900 head of cattle for these and other Indians; this supply was deemed sufficient to last until May, 1852.—(See Doc. 4, p. 259.)

George Belt was an Indian trader, having the exclusive right to trade with the Indians on the reservation where he was settled.

The Indians on the reservation for which he was licensed were working and mining for him and other whites; and the traders paid large sums for licenses, and realized great profits from their trade with the Indians.—(Doc. 4, pp. 107, 207, 246.) It is contrary to public policy, if not in violation of statute, (act of June 30, 1834, sec.

14, 4 Stat., 738,) for any such trader to act as an agent of the United States, as Belt appears to have done.

The solicitor contends that the contract with Belt & Co. is void, being made contrary to the act of May 1, 1820, (sec. 6, 3 Stat., 568,) which prohibits any contracts, except such as are made under a law authorizing the same, or where there are appropriations adequate to their fulfillment.

And again: being made contrary to the provisions of the act of June 30, 1834, (sec. 13, 4 Stat., 757,) which prescribes the mode of purchasing goods for Indians.

And again: if these acts should not be held to apply, objection is further made for non-conformity to the act of March 3, 1809, (2 Stat., 536,) as construed by Attorney General Berrien, August 29, 1829.

It is claimed by the petitioners that the relation of the government to the Indians is similar to that of guardian to his ward; and it is, therefore, bound for necessities furnished. If so, those who claim to have furnished necessities must prove the necessity, (Chitty Cont., 117, and cases there cited,) and that the government has funds of these wards in possession to pay the debt. But we deny the existence of that relation, and contend that the duty of the government to the Indians is one of imperfect obligation, and one which Congress only can acknowledge and discharge.

The solicitor denies that Johnston had authority to purchase the flour from Belt & Co.

He denies that the Indians for whom it was purchased needed it for their subsistence.

And he denies that any of it ever came into the possession of any officer or agent of the United States.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

C. V. STUART *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the Court.

The petitioner claims as the assignee of George W. Belt & Co., merchants and licensed traders to the Indians on the reservation between the Tuolumne and Mercedes rivers, and the claim is for supplies of food furnished to the Indians on that reservation, from August 5, 1851, to January 31, 1852, by Belt & Co., upon a contract made with them by Adam Johnston, sub-Indian agent for the San Joaquin valley, on the part of the United States.

The making of the contract is testified to by Mr. Johnston in his deposition, (answers to 6th and 7th direct interrogatories,) in which he says that he contracted with Belt & Co. for beef and flour, to be delivered in such quantities as in his judgment the necessities of the Indians at the reservation might require.

The delivery of the beef is testified to by Mr. Johnston and P. T.

Smith. Mr. Johnston, in his deposition, (answers to 6th, 7th, 8th direct, 4th, 5th, 8th, 22d, 28th, 29th, 30th, 31st, and 32d cross-interrogatories,) states that the articles specified in exhibit No. 1 were delivered in his presence, and that he was present at the delivery of some portion of the articles specified in the other exhibits, Nos. 2, 3, 4, 5, respectively, but the particular items delivered in his presence he cannot specify; that at times deliveries of provisions were made in his necessary absence on the business of the reservations, and that in such cases he satisfied himself of the delivery from the persons employed to make it, and others present, before signing the receipts, which he verifies.

Mr. T. P. Smith, who was in the employ of Belt & Co., testifies (answer to 5th direct interrogatory) to the delivery of beef and flour to the Indians. Answer 7th, direct, he says: The beef was killed two or three times a week; there was sometimes one, sometimes three, but mostly three at each killing. I have seen bags of flour delivered to the Indians, but not much; I was not where I could see it.

It is observable that exhibit No. 1, (Johnston's deposition,) is altogether for supplies "furnished a party of Stanislaus Indians, and a party of Four Creeks Indians, while on a visit to this reservation," and the charge for these is \$462 81, and the exhibit specifies that they were delivered "as per verbal order." The supplies specified in the other exhibits are stated to have been delivered "to the Indians on the Mercedes and Tuolumne rivers" *as per contract*, and the amount of deliveries from December 1 to December 31, 1851, is nearly double the amount delivered in any other month, and Mr. Smith (answer 7th and 8th cross) says there was a feast in December which lasted a week, and in which they must have killed nine beasts, and he said "several bags of flour, weighing 200 pounds each, given to the Indians." Mr. Smith refers to two or three other feasts, but whether these were before or after August 5, 1851, does not appear.

Mr. Johnston, in his deposition, (24th cross,) states that there were on the Tuolumne and Mercedes rivers about 950 Indians, and that other Indians came there, as well as wild Indians from the mountains, and that distribution was made to all, according to their actual necessities.

Mr. Johnston testifies, (answer 26th cross,) sometimes two or three days would intervene between the deliveries, and sometimes more. Mr. Smith testifies that the beef was killed "two or three times a week." The exhibits (2, 3, 4,) represent the deliveries at regular intervals of a week. It appears from the evidence (Doc. 4, pp. 69 and 70) that the Indians were, under the first treaty made by the three commissioners, removed on to the reservation, March 20, 1851. In Doc. 4, p. 89, it is stated that Mr. Johnston left the commissioners to proceed to the Indian settlement between the Mercedes and Tuolumne rivers, to supply the Indians with such food as may be actually necessary. It is shown (Doc. 4, p. 95; Doc. 61, p. 11) that in April and May Mr. Johnston received from the commissioners forty head of cattle for these Indians, and the evidence does not show what supplies, or that any supplies, were thereafter furnished for them by the commissioners. (The 1,900 head of cattle delivered to Mr. Johnston

by Commissioner Barbour, Doc. 61, p. 113, were for the Indians south of the Chouchilla river. Doc. 61, p. 11; Doc. 4, p. 259.)

And the evidence shows that the food for which this claim is made was contracted for by Mr. Johnston on his own authority merely, and that it was to supply the deficiencies in the amount furnished by the commissioners and stipulated in the treaties.

In his report of his transactions, made to the department, (Doc. 4, p. 104, June 24, 1851,) Mr. Johnston says, (pp. 105-'6,) speaking of the Indians: "They came from the mountains without food, depending upon the small amount allowed in their treaties, with the roots and seeds to be daily gathered by their females. These have been found wholly inadequate to their necessities. * * * *

"The consequences have been continual complaints for food, and I doubt not there has been some suffering among them.

"Under this state of things what was my duty? to say nothing of humanity, under such circumstances, what was the best policy to be pursued by me for the interest of the government? *In the absence of authority*, and in view of the best interests of the government, I '*took the responsibility*' of furnishing *greater* supplies of beef to the Indians *than was stipulated in the treaties*, relying on the government for its payment in future."

In the same report, (Doc. 4, p. 106,) Mr. Johnston states: "Besides their original destitution on entering into the treaties, the Indians of the reservations are gradually swelling in numbers from the Monors or wild Indians from the adjacent mountains. Those are as destitute as their friends, and must be fed or they will return to their covert places in the mountains, and depend upon thieving and plunder for subsistence."

On August 12, 1851, the department acknowledges the receipt of Mr. Johnston's report, and in reply they instruct him, (Doc. 4, p. 21 :) "The motives which prompted you to furnish *additional subsistence* to the Indians, and employ a physician to vaccinate them and prescribe for the diseased among them, are duly appreciated by this office, and as there are no appropriations now applicable to such expenditures, the department will recommend the subject to the favorable consideration of Congress, that such action may be had by that body as shall provide for them."

This case is the same in principle as the case of Samuel J. Hensley *vs.* The United States, heretofore decided by this Court, and for the reasons and considerations therein stated we are of opinion that the petitioner is not entitled to the relief he prays for.